IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2743 OF 2004

M/s.B.Arvinkumar & Co. .. Petitioner

v/s.

Commissioner of Income-tax XVI,
Mumbai & ors. .. Respondents

Ms.Arati Vissanji with Mr.S.J.Mehta for petitioner.

Mr.B.M.Chatterjee with Ms.S.V.Bharucha i/by
Mr.P.Kapur for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 18th October, 2004

P.C.

Heard.

2. Rule. Returnable forthwith.

3. The advocate on record for the revenue waives service.

4. Rule is treated on board for final hearing at this stage.

5. Having considered the available material and all the aspects, we are of the view that the application made by the petitioner seeking extension under section 80HHC (2)(a) for realisation of outstanding export proceeds requires reconsideration by the Commissioner of Income Tax, Mumbai City XVI, Mumbai. It is so because it is apparent from the particulars available on record that the payment has been received, though

belatedly, from the concerned parties. The petitioner in the application seeking extension under section 80HHC (2)(a) for realisation of outstanding export proceeds set out the ground that delay was due to bad overseas market condition and cut throat competition. The Commissioner seems to have overstretched the matter by observing that the assessee ought to have established with evidence that he was unable to bring the convertible foreign exchange for the reasons beyond control. The assessee's explanation suggests that it was beyond his control. The matter requires reconsideration by the Commissioner.

6. We, accordingly, set aside the order dated 17.3.2004 impugned in the present writ petition and direct the Commissioner of Income Tax, Mumbai City XVI, Mumbai to reconsider the petitioner's application dated 8.12.1997 seeking extension under section 80HHC (2)(a) in accordance with law.

7. Rule is made absolute in the aforesaid terms.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)